Mustaqeem bin Zolkeflee v Ayob bin Mustapa @ Mustafa and another suit

HIGH COURT (MUAR) — CIVIL SUIT NOS JB-22NCVC-27–04 OF 2021 AND JB-22NCvC-28–04 OF 2021
SURIA KUMAR JC
20 NOVEMBER 2023

Land Law — Transfer — Validity of — Irrevocable power of attorney — Plaintiffs claimed to set aside transfer of land done by irrevocable power of attorney executed by them in favour of defendant — Whether plaintiffs failed to plead fraud — Whether plaintiffs executed irrevocable power of attorney in favour of defendant for sale of lands — Whether irrevocable power of attorney was valid — Whether there was any sale and purchase agreement executed by plaintiffs and defendant for sale of lands — Whether there was any consideration paid for purchase of lands to plaintiffs or their father

The plaintiff ie Mustaqeem bin Zolkeflee ('Mustaqeem') in Suit 27 became the registered proprietor of a land upon transfer from his father's company Nadi Ulung Sdn Bhd ('Nadi Ulung'). Another piece of land was transferred from Nadi Ulung to his older brother, the plaintiff in Suit 28 ie Naqiuddin bin Zolkeflee ('Naqiuddin'). Not long thereafter, the plaintiffs' father ('PW3') asked a broker ('PW2') to look for a buyer for both the lands. The broker introduced the plaintiffs' father to a prospective buyer ie Dato' Salleh bin Mohamed ('Dato' Salleh') who agreed to purchase both the lands for RM3.8m. Both parties agreed to meet in the broker's house on 11 December 2018 to discuss the sale transaction. At the meeting, Naqiuddin, PW3, Dato' Salleh and his family, one Sallehuddin bin Satar ('Salehuddin'), and a few others, were present. In the course of the meeting, a solicitor ('DW3') hurriedly dropped by the broker's house and attended to the execution of a document by Naqiuddin and left. Further during the meeting, Dato' Salleh handed a cheque for the sum of RM370,000 in favour of PW3 and transferred a further sum of RM10,000 online into PW3's account. Dato' Salleh informed PW3 not to cash the cheque with the understanding he would give a replacement cheque to PW3. During the evening of the same day, PW3, Dato' Salleh and Salehuddin met again. During this meeting, DW3 attended to the execution of a document by Mustaqeem. PW3 had deposited the original title deeds for both lands to be kept by DW3 on the same day. Thereafter, neither the plaintiffs nor PW3 received any payment of the purchase price apart from the RM10,000 transferred online by Dato' Salleh. The cheque for the sum of RM370,000 was never cashed and cleared in PW3's account. Sometime on 31 March 2019, the plaintiffs got to know that the land was caveated by one Ayob bin Mustapa @ Mustafa ('the defendant') upon conducting a land search as a result of

A interest shown by a developer in doing a joint venture in respect of the plaintiffs' lands. This led to the plaintiffs applying to remove the private caveats by way of a court order and subsequently lodging private caveats to protect their interest. The court orders for the removal of the defendant's private caveat were obtained and in the course of registering these orders, it came to light that B Mustaqeem's land had already been transferred onto the defendant's name using an irrevocable power of attorney, whereas Naqiuddin's land was yet to be transferred. This was when the plaintiffs knew for the first time the existence of an irrevocable power of attorney purportedly executed by them in favour of the defendant. The defendant's version was that he got know from one Mohamad C Faeez Amirul bin Mohd Fauzi ('DW2'), Dato' Salleh and Salehuddin that the lands were for sale by the owners. According to the defendant, PW3 had requested for cash payment and the sale and purchase transaction to be via a power of attorney to avoid real property gains tax. Based on a purported deposit D payment of RM100,000, the defendant lodged private caveats on both lands. The defendant was duly informed by DW2 and DW3 that the plaintiffs had executed the power of attorney. The plaintiffs commenced this action against the defendant to declare the irrevocable power of attorney as null and void. In Suit 27, Mustaqeem also prayed for the cancellation of the registration of the E transfer of his land into the defendant's name. The issues for consideration were: (a) whether the plaintiffs failed to plead fraud; (b) whether the plaintiffs executed the irrevocable power of attorney in favour of the defendant for the sale of the lands; (c) whether the irrevocable power of attorney was valid; (d) whether there was any sale and purchase agreement executed by the F plaintiffs and defendant for the sale of the lands; and (e) whether there was any consideration paid for the purchase of the lands to the plaintiffs or their father.

Held, allowing the plaintiffs' claims with cost:

G (1) The plaintiffs' pleaded claim was to set aside the transfer of the lands that was done by using void instruments. In the circumstances, there was no merit in the defendant's argument that the plaintiffs had failed to plead fraud and details of fraud (see paras 34 & 36–37).

H (2) The defendant had succeeded in proving that the signature appearing on the impugned power of attorney belonged to the plaintiffs. Mustaqeem during his cross-examination agreed that he had signed the impugned power of attorney when it was referred to him whereas Naqiuddin also agreed he had executed the impugned power of attorney. In the circumstances, the power of attorney was indeed executed by the I plaintiffs (see paras 44–46 & 51).

(3) The defendant was a stranger to the plaintiffs and their father, and they never met before. Their father also received a cheque in the sum of RM370,000 together with an online payment for RM10,000 from Dato' Salleh on the date when the plaintiffs executed the impugned

power of attorney. If at all the impugned power of attorney in favour of the defendant was indeed explained to the plaintiffs, surely the plaintiffs and their father would have questioned DW3 as to why the defendant involved in the sale transaction instead of Dato' Salleh. The only irresistible inference which could be drawn was that DW3 did not explain the contents of the impugned power of attorney to the plaintiffs but merely attended to their execution of the same by the plaintiffs. Further, the impugned power of attorney made no mention of any valuable consideration. In the circumstances, the impugned power of attorney had fallen foul of s 6 of the Powers of Attorney Act 1949 and therefore was invalid (see paras 62–64, 66–77 & 80).

(4) Since the plaintiffs had denied receiving any purchase consideration for the sale of the land apart from the RM10,000 online payment, the burden was on the defendant to call Dato' Salleh and Sallehuddin since the defendant was alleging that the payment of RM100,000 and RM650,000 was made through Dato' Salleh in the presence of Sallehuddin. An adverse inference under s 114(g) of the Evidence Act 1950 ought to be drawn against the defendant for failing to call Dato' Salleh and Sallehuddin to testify with regards to the payment of RM100,000 and RM650,000 to the plaintiffs and/or their father. The defendant also did not lodge any report stating that these payments were made to the plaintiffs. There was thus no iota of evidence that these sums were indeed paid by the defendant except for the sum of RM10,000 transferred by Dato' Salleh to the plaintiff's father on the date of the execution of the power of attorney. The defendant had failed to prove on the balance of probabilities that he had paid the sum of RM750,000 to the plaintiffs and/or their father towards the purchase of the lands (see paras 98–99 & 103–104).

(5) DW3 as an advocate and solicitor had a duty to ensure that the purchase considerations for the lands were fully paid by the defendant to the plaintiffs and obtain a written confirmation from the plaintiffs that they had received the monies before proceeding to adjudicate the memorandum of transfer and presenting it to the Land Office. DW3 had failed to discharge his duties carefully and diligently. What the defendant did was use the power of attorney executed by the plaintiffs to transfer the said lands onto himself by signing as transferor and transferee. The power of attorney made no mention of any valuable consideration given by the defendant to the plaintiffs if indeed the purpose of the power of attorney was to serve as a sale and purchase agreement between the parties. The impugned power of attorney was only a subsidiary instrument and not a sale and purchase agreement for the lands that contained all the terms and conditions for the sale. The defendant had no right to use the impugned power of attorney which had no valuable consideration and which was not a sale and purchase agreement to transfer the lands. The impugned

irrevocable power of attorney in both cases were null and void. Hence, the memorandum of transfers executed by the defendant as transferor and transferee using the impugned irrevocable power of attorney in both cases were null and void. The transfer of Mustaqeem's land to the defendant was defeasible under s 340(2)(b) of the National Land Code on the ground that it was registered using the power of attorney and memorandum of transfer which were void instruments. The plaintiffs had proven their claim on the balance of probabilities (see paras 109–112, 114–118 & 122).

[Bahasa Malaysia summary

Plaintif iaitu Mustaqeem bin Zolkeflee ('Mustaqeem') dalam Saman 27 menjadi pemilik berdaftar sebidang tanah selepas pindah milik daripada syarikat bapanya Nadi Ulung Sdn Bhd ('Nadi Ulung'). Sebidang tanah lain telah dipindahkan daripada Nadi Ulung kepada abangnya, plaintif dalam Tuntutan 28 iaitu Naqiuddin bin Zolkeflee ('Naqiuddin'). Tidak lama selepas itu, bapa plaintif ('PW3') meminta seorang broker ('PW2') mencari pembeli untuk kedua-dua tanah tersebut. Broker itu memperkenalkan bapa plaintif kepada seorang bakal pembeli iaitu Dato' Salleh bin Mohamed ('Dato' Salleh') yang bersetuju untuk membeli kedua-dua tanah dengan harga RM3.8 juta. Kedua-dua pihak bersetuju untuk bertemu di rumah broker pada 11 Disember 2018 untuk membincangkan urus niaga jualan itu. Di pertemuan itu, Naqiuddin, PW3, Dato' Salleh dan keluarganya, seorang yang bernama Sallehuddin bin Satar ('Salehuddin'), dan beberapa orang lain turut hadir. Sepanjang mesyuarat itu, seorang peguam ('DW3') tergesa-gesa singgah di rumah broker dan menguruskan tandatangan dokumen oleh Naqiuddin dan kemudiannya pergi. Selanjutnya dalam pertemuan tersebut, Dato' Salleh menyerahkan cek bernilai RM370,000 kepada PW3 dan memindahkan sejumlah lagi RM10,000 secara dalam talian ke dalam akaun PW3. Dato' Salleh memaklumkan PW3 supaya tidak menunaikan cek itu dengan pemahaman dia akan memberikan cek gantian kepada PW3. Pada petang hari yang sama, PW3, Dato' Salleh dan Salehuddin bertemu lagi. Dalam pertemuan ini, DW3 menguruskan tandatangan dokumen oleh Mustaqeem. PW3 telah menyerahkan geran hakmilik asal untuk kedua-dua tanah itu untuk disimpan oleh DW3 pada hari yang sama. Selepas itu, sama ada plaintif mahupun PW3 tidak menerima sebarang bayaran harga pembelian selain daripada RM10,000 yang dipindahkan secara dalam talian oleh Dato' Salleh. Cek bernilai RM370,000 tidak pernah ditunaikan dan dijelaskan dalam akaun PW3. Pada sekitar 31 Mac 2019, plaintif mendapati bahawa tanah tersebut telah diletakkan kaveat oleh seorang yang bernama Ayob bin Mustapa @ Mustafa ('defendan') setelah melakukan carian tanah sebagai hasil daripada minat yang ditunjukkan oleh seorang pemaju untuk menjalankan usaha sama berkaitan tanah plaintif. Ini menyebabkan plaintif memohon untuk memotong kaveat persendirian melalui perintah mahkamah dan kemudiannya meletakkan kaveat persendirian untuk melindungi kepentingan mereka.

Perintah mahkamah untuk pemotongan kaveat persendirian defendan diperoleh dan semasa mendaftarkan perintah-perintah ini, didapati bahawa tanah Mustaqeem sudah dipindahkan ke nama defendan menggunakan surat kuasa wakil tidak boleh dibatalkan, manakala tanah Naqiuddin belum lagi dipindahkan. Inilah ketika plaintif pertama kali mengetahui adanya surat kuasa wakil tidak boleh dibatalkan yang dikatakan telah mereka tandatangani untuk pihak defendan. Versi defendan adalah bahawa dia mengetahui daripada seorang yang bernama Mohamad Faeez Amirul bin Mohd Fauzi ('DW2'), Dato' Salleh dan Salehuddin bahawa tanah tersebut dijual oleh pemiliknya. Menurut defendan, PW3 telah meminta pembayaran tunai dan urusan jual beli dilakukan melalui surat kuasa wakil untuk mengelak daripada cukai keuntungan hartanah. Berdasarkan bayaran deposit yang dikatakan berjumlah RM100,000, defendan telah meletakkan kaveat persendirian ke atas kedua-dua tanah. Defendan telah dimaklumkan dengan sewajarnya oleh DW2 dan DW3 bahawa plaintif telah melaksanakan surat kuasa wakil tersebut. Plaintif memulakan tindakan ini terhadap defendan untuk mengisytiharkan surat kuasa wakil tidak boleh dibatalkan tersebut sebagai batal dan tidak sah. Dalam Saman 27, Mustaqeem juga memohon pembatalan pendaftaran pemindahan tanahnya ke nama defendan. Isu-isu untuk pertimbangan adalah: (a) sama ada plaintif gagal untuk memplid penipuan; (b) sama ada plaintif melaksanakan surat kuasa wakil tidak boleh dibatalkan memihak kepada defendan bagi penjualan tanah tersebut; (c) sama ada surat kuasa wakil tidak boleh dibatalkan itu sah; (d) sama ada terdapat sebarang perjanjian jual beli yang dilaksanakan oleh plaintif dan defendan untuk penjualan tanah tersebut; dan (e) sama ada terdapat sebarang pertimbangan yang dibayar untuk pembelian tanah kepada plaintif atau bapa mereka.

Diputuskan, membenarkan tuntutan plaintif dengan kos:

(1) Tuntutan yang diplidkan oleh plaintif adalah untuk mengetepikan pemindahan tanah yang dilakukan dengan menggunakan instrumen yang tidak sah. Dalam keadaan tersebut, tiada merit dalam hujahan defendan bahawa plaintif telah gagal untuk memplid penipuan dan butiran penipuan (lihat perenggan 34 & 36–37).

(2) Defendan telah berjaya membuktikan bahawa tandatangan yang terdapat pada surat kuasa wakil yang dipersoalkan adalah milik plaintif. Mustaqeem semasa pemeriksaan balas bersetuju bahawa dia telah menandatangani surat kuasa wakil yang dipersoalkan apabila dirujuk kepadanya manakala Naqiuddin juga bersetuju bahawa dia telah melaksanakan surat kuasa wakil yang dipersoalkan tersebut. Dalam keadaan tersebut, surat kuasa wakil sememangnya dilaksanakan oleh plaintif (lihat perenggan 44–46 & 51).

(3) Defendan adalah orang asing kepada plaintif dan bapa mereka, dan mereka tidak pernah bertemu sebelum ini. Bapa mereka juga menerima

cek bernilai RM370,000 berserta pembayaran dalam talian sebanyak RM10,000 daripada Dato' Salleh pada tarikh plaintif melaksanakan surat kuasa wakil yang dipersoalkan. Jika benar surat kuasa wakil yang dipersoalkan yang memihak kepada defendan itu dijelaskan kepada plaintif, sudah pasti plaintif dan bapa mereka akan mempersoalkan DW3 mengapa defendan terlibat dalam urusan jual beli tersebut dan bukannya Dato' Salleh. Satu-satunya kesimpulan yang boleh dibuat ialah DW3 tidak menjelaskan kandungan surat kuasa wakil yang dipersoalkan kepada plaintif tetapi hanya menguruskan pelaksanaannya oleh plaintif. Selain itu, surat kuasa wakil yang dipersoalkan tidak menyebut sebarang pertimbangan berharga. Dalam keadaan tersebut, surat kuasa wakil yang dipersoalkan telah melanggar s 6 Akta Kuasa Wakil 1949 dan oleh itu adalah tidak sah (lihat perenggan 62–64, 66–77 & 80).

(4) Oleh kerana plaintif telah menafikan menerima sebarang pertimbangan pembelian untuk penjualan tanah selain daripada pembayaran dalam talian sebanyak RM10,000, beban terletak pada defendan untuk memanggil Dato' Salleh dan Sallehuddin kerana defendan mendakwa bahawa pembayaran RM100,000 dan RM650,000 dilakukan melalui Dato' Salleh di hadapan Sallehuddin. Satu inferens bertentangan di bawah s 114(g) Akta Keterangan 1950 harus dibuat terhadap defendan kerana gagal memanggil Dato' Salleh dan Sallehuddin untuk memberi keterangan bersabit pembayaran RM100,000 dan RM650,000 kepada plaintif dan/atau bapa mereka. Defendan juga tidak membuat sebarang laporan yang menyatakan bahawa pembayaran ini dibuat kepada plaintif. Oleh itu, tiada sedikit pun keterangan bahawa jumlah ini benar-benar dibayar oleh defendan kecuali jumlah RM10,000 yang dipindahkan oleh Dato' Salleh kepada bapa plaintif pada tarikh pelaksanaan surat kuasa wakil. Defendan telah gagal membuktikan pada imbangan kebarangkalian bahawa dia telah membayar sejumlah RM750,000 kepada plaintif dan/atau bapa mereka terhadap pembelian tanah tersebut (lihat perenggan 98–99 & 103–104).

(5) DW3 sebagai seorang peguam bela dan peguam cara mempunyai tanggungjawab untuk memastikan bahawa pertimbangan pembelian tanah telah dibayar sepenuhnya oleh defendan kepada plaintif dan mendapatkan pengesahan bertulis daripada plaintif bahawa mereka telah menerima wang tersebut sebelum meneruskan untuk melaksanakan memorandum pemindahan dan mengemukakannya kepada pejabat tanah. DW3 telah gagal melaksanakan tugasnya dengan berhati-hati dan berhemat. Apa yang dilakukan oleh defendan adalah menggunakan surat kuasa wakil yang dilaksanakan oleh plaintif untuk memindahkan tanah tersebut kepada dirinya sendiri dengan menandatangani sebagai pemindah dan penerima pindahan. Surat kuasa wakil tersebut tidak menyebut sebarang pertimbangan berharga yang diberikan oleh defendan kepada plaintif jika benar tujuan surat kuasa wakil tersebut

adalah untuk berfungsi sebagai perjanjian jual beli antara pihak-pihak tersebut. Surat kuasa wakil yang dipersoalkan hanyalah instrumen sampingan dan bukan perjanjian jual beli untuk tanah yang mengandungi semua terma dan syarat untuk penjualan tersebut. Defendan tidak berhak menggunakan surat kuasa wakil yang dipersoalkan yang tidak mempunyai sebarang pertimbangan berharga dan yang bukan perjanjian jual beli untuk memindahkan tanah tersebut. Surat kuasa wakil tidak boleh dibatalkan dalam kedua-dua kes tersebut adalah batal dan tidak sah. Oleh itu, memorandum pemindahan yang dilaksanakan oleh defendan sebagai pemindah dan penerima pindahan menggunakan surat kuasa wakil tidak boleh dibatalkan dalam kedua-dua kes tersebut adalah batal dan tidak sah. Pemindahan tanah Mustaqeem kepada defendan boleh dibatalkan di bawah s 340(2)(b) Kanun Tanah Negara atas alasan ianya didaftarkan menggunakan surat kuasa wakil dan memorandum pemindahan yang merupakan instrumen tidak sah. Plaintif telah membuktikan tuntutan mereka pada imbangan kebarangkalian (lihat perenggan 109–112, 114–118 & 122).]

Cases referred to

Affluent Freight Sdn Bhd v Sumathi a/p K Appukuttan Pillai & Anor [2001] MLJU 635; [2001] 8 CLJ 71, HC (refd)

Five Star Heritage Sdn Bhd & Ors v Nai Ninn Sararaksh & Anor [2024] 2 MLJ 315; [2023] 5 CLJ 345, CA (folld)

Hong Yik Trading v Liziz Plantation Sdn Bhd [2017] 5 MLJ 398; [2017] 8 CLJ 491, FC (refd)

Hiroto Watanabe v Law Yen Yen & Anor [2012] 8 MLJ 202; [2012] 3 CLJ 302, HC (refd)

Haji Fauzi bin Hj A Hamid v Kenangan Erat Sdn Bhd [2005] MLJU 455; [2005] 8 CLJ 230, HC (refd)

Ngadi bin Apandi v Mohamad Ali bin Md Ahsan & Ors [2016] MLJU 1548; [2016] 1 LNS 1743, HC (refd)

Samuel Naik Siang Ting v Public Bank Bhd [2015] 6 MLJ 1; [2015] 8 CLJ 944, FC (refd)

Tan Ah Kow & Anor v Tan Chaui En [2017] 6 MLJ 297; [2018] 2 CLJ 610, CA (refd)

Legislation referred to

Contracts Act 1950 s 30
Evidence Act 1950 ss 101, 114(g)
National Land Code ss 340, 340(2)(b), 417, Form 14A
Powers of Attorney Act 1949 s 6

Mohd Hamizi bin Mohd Yusof (Raziyan Rahim & Assoc) for the plaintiff.
Amir Anuar bin Abdul Ghani (with Dzaki Ezhar bin Bahar, Mohamad Hilmi

bin Mahmud @ Mahud and Anis Nur Atikah bt Abd Rahman) (Amir Anuar & Co) for the defendant.

Suria Kumar JC:

INTRODUCTION

[1] Both the above cases concern the sale of two individual pieces of land.

[2] The plaintiffs claim they do not know the defendant and contend that they never agreed to sell the land to the defendant by way of an irrevocable power of attorney.

[3] On the other hand, the defendant says he never met the plaintiffs but is aware from third parties that plaintiffs agreed to sell the land via an irrevocable power of attorney to avoid real property gains tax.

[4] Since the purported sale of both lands happened almost the same time involving common parties, common facts and the trial was heard together, I propose to deliver one judgement only.

BACKGROUND FACTS

[5] The plaintiff, Mustaqeem bin Zolkeflee ('Mustaqeem') in Suit No 27 became the registered proprietor of land known as HS(M) 1648 PTD 8103, Mukim Kesang, Daerah Tangkak, Negeri Johor on 4 March 2018 upon transfer from his father's company Nadi Ulung Sdn. Bhd.

[6] Around the same time, another piece of land known as as HS(M) 1649 PTD 8103, Mukim Kesang, Daerah Tangkak, Negeri Johor was transferred from Nadi Ulung Sdn Bhd to his older brother Naqiuddin bin Zolkeflee ('Naqiuddin'), the plaintiff in Suit No 28.

[7] Both Mustaqeem and Naqiuddin are brothers and will be referred to as the plaintiffs hereafter.

[8] Not long thereafter the plaintiffs' father (PW3) asked a broker (PW2) to look for a buyer for both the lands.

[9] The broker introduced the plaintiffs' father to a prospective buyer called Dato' Salleh bin Mohamed ('Dato' Salleh') who agreed to purchase both the lands for RM3.8m.

[10] Both parties also agreed to meet in the broker's house sometime in early December 2018 to discuss the sale transaction. The meeting took place on 11 December 2018 at the broker's house in Muar. A

[11] At the meeting, plaintiff Naqiuddin, his father, Dato' Salleh and his family, one Sallehuddin bin Satar ('Sallehuddin Satar) and a few other individuals presumably Dato' Salleh's bodyguard were present. B

[12] In the course of the meeting, a solicitor, Mohd Arif bin Kamisan (DW3) hurriedly dropped by the broker's (PW2) house attended to the execution of a document by plaintiff Naqiuddin and left. C

[13] Further during the meeting, Dato' Salleh handed a cheque for the sum of RM370,000 in favour of the plaintiffs' father and transferred a further sum of RM10,000 online into the plaintiffs' father's account. D

[14] Upon handing over the cheque for the sum of RM370,000 to the plaintiffs' father, Dato' Salleh informed him not to cash the cheque with the understanding he would give a replacement cheque to the plaintiffs father. E

[15] During the evening of the same day, the plaintiffs' father, Dato' Salleh and Sallehuddin Satar met again at Macdonald's Petronas Skudai, Johor. During this meeting, the same solicitor (DW3) attended to the execution of a document by plaintiff Mustaqeem. F

[16] It is not in dispute that the plaintiffs' father had deposited the original title deeds for both lands to be kept by the solicitor (DW3) on the same day.

[17] Thereafter, neither the plaintiffs nor their father received any payment of the purchase price apart from the RM10,000 transferred online by Dato' Salleh. G

[18] It is not in dispute that the cheque for the sum RM370,000 was never cashed and cleared in the plaintiffs' father's account. H

[19] Sometime on 31 March 2019, the plaintiffs got to know the land was caveated by one Ayob bin Mustapa @ Mustafa, the defendant upon conducting a land search as a result of interest shown by a developer in doing a joint venture in respect of the plaintiffs' lands. I

[20] This led to the plaintiffs applying to remove the private caveats by way of a court order and subsequently lodging private caveats to protect their interest.

A **[21]** The court orders for the removal of the defendant's private caveat were obtained and in the course of registering these orders, it came to light that plaintiff Mustaqeem's land had already been transferred onto the defendant's name using an irrevocable power of attorney.

B **[22]** Whereas plaintiff Naqiuddin's land was yet to be transferred.

[23] This was when the plaintiffs knew for the first time the existence of an irrevocable power of attorney purportedly executed by them in favour of the C defendant.

[24] The plaintiffs and their father do not know the defendant.

[25] The defendant's version is that he got know from one Mohamad Faeez D Amirul bin Mohd Fauzi ('Faeez Amirul'), Dato' Salleh and Sallehuddin Satar that that the lands were for sale by the owners.

[26] According to defendant (DW1), the plaintiffs' father requested for cash payment and the sale and purchase transaction to be via a power of attorney to E avoid real property gains tax.

[27] Defendant was informed by Faeez Amirul (SD2) in early November 2018 that the plaintiffs' father had asked for a commitment fee of RM100,000. F This sum was withdrawn by defendant from his bank account and handed to Faeez Amirul, Dato' Salleh and Sallehuddin Satar to be paid to the plaintiffs' father.

[28] Based on this purported deposit payment of RM100,000, defendant G lodged private caveats on both Lands.

[29] The defendant was duly informed by Faeez Amirul (DW2) and the solicitor (DW3) that the plaintiffs had executed the power of attorney.

H **[30]** Plaintiffs commenced this action against defendant to declare the irrevocable power of attorney as null and void.

[31] In Suit No 27 plaintiff Mustaqeem, also prays for the cancellation of the I registration of the transfer of his land into defendant's name.

[32] Apart from the plaintiffs, the remaining witnesses at the trial were common witnesses giving similar evidence in both cases.

ISSUES TO BE DETERMINED

[33] In my view the following issues need to be determined:

(a) whether plaintiffs failed to plead fraud;

(b) whether plaintiffs executed an irrevocable power of attorney in favour of defendant for the sale of the lands;

(c) if it was duly executed, is the irrevocable power of attorney valid;

(d) whether there was any sale and purchase agreement executed by the plaintiffs and defendant for the sale of the lands; and

(e) whether there was any consideration paid for the purchase of the lands to the plaintiffs or their father.

ANALYSIS AND FINDING

Whether plaintiffs failed to plead fraud or details of fraud

[34] The defendants submit that the plaintiffs have failed to plead fraud and details of fraud.

[35] Whereas the plaintiffs submit that their claim is premised on challenging the validity of the irrevocable power of attorney executed by them in favour of the defendant and the memorandum of transfer executed by the defendant using the said power of attorney to transfer the lands to the defendants and to declare the same as null and void.

[36] I have perused through the plaintiffs' statement of claim. I find the plaintiffs' pleaded claim is to set aside the transfer of the lands that was done by using void instruments.

[37] In this circumstance, I find no merit in the defendant's argument.

Whether the plaintiff and his brother executed the irrevocable power of attorney

[38] The plaintiffs plead in their statement of claim that they never executed the impugned power of attorney.

[39] Apart from the denial in their testimony that the signature appearing in the impugned power of attorney is not theirs, no other evidence was proffered by plaintiff to show that their signatures were forged.

[40] Whereas defendant called the solicitor (DW3) who prepared the impugned power of attorney and attested to the plaintiffs and signature to prove the power of attorney was duly executed by the plaintiffs.

[41] To corroborate this fact, defendant produced a video recording of plaintiff Mustaqeem signing a document in the presence of the solicitor (DW3) at McDonald's Petronas Skudai on 11 December 2018.

[42] The admissibility of the video recording is challenged by the plaintiff because the recording and sound are not clear. It was then marked as ID 11 and the transcription of the conversation from the recording was marked as ID 12.

[43] Whereas for plaintiff Naqiuddin, defendant produced photographs of him signing a document in the presence of the solicitor (DW3) at the broker's (PW2) house during the meeting on 11 December 2018. These photographs were marked D13 (1 & 2).

[44] The court finds that even without the evidence of the video recording and the photographs, defendant has succeeded in proving that the signature appearing on the impugned power of attorney belongs to plaintiffs based on my reasons given below.

[45] I find that plaintiff Mustaqeem during his cross-examination agreed that he had signed the impugned power of attorney when it was referred to him. His evidence is reproduced below:

> PD-1: Encik Mustaqeem pernah tandatangan surat kuasa wakil. Rujuk muka surat 4, 5, 6, 7 Bundle C. Pohon refer mukasurat 7 Bundle C dan Penyata Saksi PWS-1 muka surat 9?
>
> SP-1: Pernah sign.

(Please see p 3 notes of evidence.)

[46] Whereas plaintiff Naqiuddin also agreed he had executed the impugned power of attorney when the photographs D13 (1 and 2) were referred to him. His evidence is reproduced below:

> PD-1: Pada mukasurat gambar A dan B tengah menandatangani dokumen?
>
> SP-1: Setuju.
>
> PD-1: Encik menandatangani SKW di hadapan yang nama Arif Bin Kamisan?
>
> SP-1: Setup.

(Please see p 9 notes of evidence.)

[47] The testimony of the attesting solicitor (DW3) that he had witnessed the execution of the irrevocable power of attorney by the plaintiffs which is crucial remains unchallenged. DW3 was never challenged by the plaintiff during cross-examination that the signature appearing on the impugned power of attorney does not belong to the plaintiffs. It was not put to DW3 that he never attested to the plaintiffs' signature.

[48] In addition, during oral submissions in court, learned counsel for the plaintiffs candidly conceded that the plaintiffs are not disputing that the signature appearing in the impugned power of attorney is forged or falsified.

[49] What the plaintiffs contend is that the purported document executed by them is a sale and purchase agreement and at no point in time did they agree to execute an irrevocable power of attorney.

[50] In other words, the plaintiffs are only attacking the identity of the document signed by them but they do not deny having signed a document witnessed by the solicitor DW3.

[51] In the circumstances, I find the power of attorney was indeed executed by the plaintiffs.

[52] For completeness, I will address the admissibility of the video recording and the transcription of the recording.

[53] Learned counsel for the plaintiffs objected to the video recording on the ground the sound was poor and inaudible. Having heard the recording, I find the purported explanations given to plaintiff Mustaqeem before the execution of the impugned power of attorney inaudible. In *Hiroto Watanabe v Law Yen Yen & Anor* [2012] 8 MLJ 202; [2012] 3 CLJ 302, it was held by His Lordship Harmindar Singh Dhaliwal (as he then was):

> Having heard the recording and perusing the transcript, I had serious doubts as to whether the transcript accurately reflected the conversation that took place. This is so because the sound recording was poor, inaudible at times, broken and for the most part unintelligible. In my view, the recording was wholly unreliable to prove anything. For this reason, I considered it unsafe to rely on this evidence and it was accordingly rejected.

[54] In addition, defendant failed to call the maker of the recording, one Abdul Rahman bin Abu Bakar ('Abdul Rahman') who recorded it using his handphone.

[55] Neither did defendant adduce any evidence as to who transcribed the conversation from the video recording and called the transcriber.

[56] In this circumstance, I rule that the video recording marked as ID11 and the transcription of the conversation from the recording marked as ID12 is inadmissible

Is the irrevocable power of attorney valid?

[57] The crux of the plaintiffs' claim is that the impugned power of attorney is null and void.

[58] The plaintiffs' case is that they were under the impression all the while they were executing a sale and purchase agreement with Dato' Salleh being the purchaser of their lands.

[59] Their father too gave evidence that he was under the impression that his sons, the plaintiffs were executing a sale and purchase agreement with Dato' Salleh as the buyer.

[60] Next plaintiffs testified that the document which they executed was never explained to them by the solicitor (DW3).

[61] However, according to the solicitor (DW3), he had explained the contents of the impugned power of attorney to the plaintiffs before their execution.

[62] The evidence before the court shows that the defendant is a stranger to the plaintiffs and their father and they never met before.

[63] The plaintiffs and their father were all the while under the impression that the buyer was Dato' Salleh. Furthermore, their father also received a cheque in the sum of RM370,000 together with an online payment for RM10,000 from Dato' Salleh on the date when the plaintiffs executed the impugned power of attorney.

[64] In such circumstances, if at all the impugned power of attorney in favour of the defendant was indeed explained to the plaintiffs, surely the plaintiffs and their father would have questioned the solicitor (DW3) as to why is the defendant involved in the sale transaction instead of Dato' Salleh.

[65] The photographs and video recording too do not corroborate the solicitor's (DW3) evidence that the impugned power of attorney was explained to the plaintiffs. In any event, I have already ruled above that the video recording is inadmissible. A

[66] As such the only irresistible inference which can be drawn is that DW3 did not explain the contents of the impugned power of attorney to the plaintiffs but merely attended to their execution of the same by the plaintiffs. B

[67] The plaintiffs also attacked the impugned power of attorney on the ground that though the execution and attestation took place on 11 December 2018, however, it is dated 15 May 2019 which is approximately six months later and stamped on 16 December 2020, more than two years later. C

[68] The defendant (DW1) and his solicitor (DW3) explained as to the delay. The reason is to ensure the transfer of the said land is not carried out within five years from the date the plaintiffs have acquired the said land from their father's company for purposes of exemption from real property gains tax. D

[69] The other reason being that defendant required time to raise finance for the stamp duty and plaintiff's father intended to sell the lands at a higher price to a third party and reimburse defendant for the purchase price together with profit. E

[70] Hence the impugned power of attorney was kept in abeyance. F

[71] I do not find the defendant's explanation acceptable. In the normal course, the impugned power of attorney ought to have been dated on the same day it was executed by the plaintiff and witnessed by the solicitor (DW3). G

[72] However, the fact remains that the impugned power of attorney was executed and attested on 11 December 2018.

[73] Since the plaintiffs are not disputing their signature on the impugned power of attorney, I do not find this ground alone sufficient to invalidate the power of attorney. H

[74] The plaintiffs also attacked the validity of the impugned power of attorney on the ground it had contravened s 6 of the Powers of Attorney Act 1949 for lack of valuable consideration. I

[75] Section 6 of the Powers of Attorney Act 1949 ('POA') read:

6 Powers of attorney given for valuable consideration

(1) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser —

(a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the done of the power, or by the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power; and

(b) any act done at any time by the done of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the done of the power, or the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(c) neither the done of the power, nor the purchaser, shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the done of the power, or of the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

[76] The solicitor (DW3) agreed in his cross-examination that under s 6 of the POA Act, a power of attorney requires valuable consideration.

[77] It is not in dispute that the impugned power of attorney makes no mention of any valuable consideration.

[78] In *Affluent Freight Sdn Bhd v Sumathi a/p K Appukuttan Pillai & Anor* [2001] MLJU 635; [2001] 8 CLJ 71, His Lordship Zulkefli Makinudin J (as he then was) held:

[6] The PA had fallen foul of ss 6 and 7 respectively of the Powers of Attorney Act 1949, for expressing itself as irrevocable when no valuable consideration was given and ...

[79] Further in *Haji Fauzi bin Hj A Hamid v Kenangan Erat Sdn Bhd* [2005] MLJU 455; [2005] 8 CLJ 230, His Lordship Low Hop Bing (as he then was) held:

[1] Upon a proper construction of s 6(1) (a) of the Powers of Attorney Act 1949, valuable consideration is an essential element in order to sustain the irrevocability of a power of attorney and that this valuable consideration must be expressly stated in specific particulars either in the power of attorney itself ...

[80] In the circumstances, I find the impugned power of attorney, has fallen foul of s 6 of the POA Act and therefore is invalid.

Any consideration paid for the purchase of the lands

Whether any sale and purchase agreement was executed

[81] The defendant pleaded in his defence that a sum of RM750,000 was paid towards the purchase of the lands with each at the price of RM375,000.

[82] The legal burden is on the defendant to prove that the sum of RM750,000 was paid to the plaintiffs as provided by s 101 of the Evidence Act 1950. This was explained in the case of *Hong Yik Trading v Liziz Plantation Sdn Bhd* [2017] 5 MLJ 398; [2017] 8 CLJ 491 by His Lordship Ariffin Zakaria CJ as follows:

> If is settled law that the burden of proof rests throughout the trial on the party who asserts that the facts exist (s 101 of the Evidence Act 1950). Where a party on whom the burden of proof lies has discharged that burden, then the evidential burden shifts to the other party. However, if the party on whom the burden of proof lies fails to discharge it, the other party need not call any evidence.

[83] According to defendant, a deposit of RM100,000 was paid from the sum of RM250,000 withdrawn from his OCBC Bank account on 23 November 2018.

[84] Defendant says he handed the sum RM 100,000 to Faeez Amirul and thereafter Faeez Amirul together with Dato' Salleh and Sallehuddin Satar handed this sum to the plaintiffs' father at Starbucks Cafe at the lobby of KSL Hotel Johor Bahru.

[85] This was followed by a balance purchase price of RM650,000 which was paid from the sum of RM899,000 withdrawn by defendant from his Lembaga Tabung Haji account.

[86] According to defendant (DW1), upon withdrawing the sum of RM899,000, he deposited this sum by way of cash deposit into Faeez Amirul's company called Al Afaq Event Management's account.

[87] Thereafter Faeez Amirul (DW2) withdrew RM650,000 from his company's account and handed it to Dato' Mohd Salleh, Sallehudin Satar and Abd Rahman who in turn handed it over to the plaintiffs and their father at a room in Concorde Hotel Johor Bahru.

[88] Whereas Faeez Amirul (DW2) agreed in his testimony that there is no proof of the sums RM100,000 and RM650,000 handed to the plaintiffs and or their father.

A **[89]** The plaintiffs and their father vehemently deny receiving the sums RM100,000 and RM650,000.

[90] It is not in dispute that defendant is unable to produce any written acknowledgement or documents to prove that the sums RM100,000 and
B RM650,000 were paid to plaintiffs and or their father.

[91] This fact was also conceded by learned counsel for the defendant during oral submissions.

C

[92] According to Faeez Amirul (DW2) during his testimony, the brown LV bag placed on the round table shown in the photographs marked as D9 and D10 contains the deposit cash sum of RM100,000.

D **[93]** However, no evidence was led to show that the brown LV bag did indeed contain cash in the sum of RM 100,000 and this sum was handed to the plaintiff's father who can be seen in the photograph together with Dato' Salleh and Sallehuddin Satar.

E **[94]** As for the balance sum of RM650,000, Faeez Amirul (DW2) testified that he handed this sum to Dato' Mohd Salleh bin Mohamad, Sallehudin bin Satar, Abd Rahman who in turn handed it over to the plaintiffs and or their father at a room in Concorde Hotel Johor Bahru.

F **[95]** Once again, no evidence was produced that the sum of RM650,000 was withdrawn from Faeez Amirul's (DW2) company, Al Afaq Event Management's account and handed to the plaintiffs and or their father.

G **[96]** Neither Dato' Salleh, Sallehudin Satar nor Abd Rahman who are important parties in the sale transaction were called to testify in respect of this fact.

[97] Learned counsel for the defendant submits that the burden is on the
H plaintiffs to call Dato' Salleh and Sallehuddin Satar.

[98] In my judgement, since the plaintiffs have denied receiving any purchase consideration for the sale of the land apart from the RM10,000 online payment, the burden is on the defendant to call Dato' Salleh and
I Sallehuddin Satar since the defendant is alleging that the payment of RM100,000 and RM650,000 was made through Dato' Salleh in the presence of Sallehuddin Satar.

[99] In the circumstance, an adverse inference under s 114(g) Evidence Act

1950 ought to be drawn against the defendant for failing to call Dato' Salleh and Sallehuddin Satar to testify with regards to the payment of RM100,000 and RM650,000 to the plaintiffs and or their father.

[100] The inference which needs to be drawn is that if they were called, both of them would not be able to confirm or produce any evidence of the purported payments to the plaintiffs and or their father.

[101] Whereas the solicitor (DW3) in his police report lodged to confirm that the plaintiffs executed the impugned power of attorney witnessed by him also stated that the sum RM650,000 was paid in cash to the plaintiffs at Concorde Hotel KL and the sum RM100,000 was paid to the plaintiffs at the lobby of KSL Hotel, Johor Bahru by Dato' Salleh, Sallehudin Satar and Abdul Rahman.

[102] However, during cross-examination, the solicitor (DW3) contradicted himself with his report by testifying that he had no knowledge or proof that these sums were paid by the defendant to the plaintiffs.

[103] The court notes that the defendant himself did not lodge any report stating that these payments were made to the plaintiffs.

[104] In conclusion, there is no iota of evidence that these sums were indeed paid by defendant except for the sum RM10,000 transferred by Dato' Salleh to plaintiffs father on the date of the execution of the power of attorney.

[105] In my judgment, defendant has failed to prove on the balance of probabilities that he has paid the sum RM750,000 (RM375,000 x 2) to the plaintiffs and or their father towards the purchase of the lands.

[106] This is further fortified by the fact that if it is true that defendant did indeed pay the purchase consideration for the sum RM750,000, surely he would have counterclaimed against the plaintiffs for reliefs in respect of the monies paid by him. But the court notes that the defendant does not have any counterclaim against the plaintiffs.

[107] Next, there was no sale and purchase agreement executed by the parties and this was confirmed by the solicitor (DW3).

[108] The solicitor (DW3) also testified that he does not know the purchase price for the lands. According to him, his role was merely to prepare an irrevocable power of attorney to protect the defendant's interest since the defendant had expended monies to purchase the lands.

[109] In my judgement the solicitor (DW3) as an Advocate and Solicitor has a duty to ensure that the purchase considerations for the lands were fully paid by the defendant to the plaintiffs and obtain a written confirmation from the plaintiffs that they had received the monies before proceeding to adjudicate the memorandum transfer and presenting it to the Land Office. He ought not to have relied only on the defendant or whoever instructed him on behalf of the defendant in respect of payment of the purchase considerations to the plaintiffs.

[110] However, when questioned by the court, the solicitor (DW3) confirmed that he did not do so. I find the solicitor had failed to discharge his duties carefully and diligently. His conduct as an Advocate and Solicitor in attending to the conveyance of the lands between the plaintiffs and the defendant certainly falls short of good conveyancing practice.

[111] What the defendant did was use the power of attorney executed by the plaintiffs to transfer the said lands onto himself by signing as transferor and transferee.

[112] The power of attorney makes no mention of any valuable consideration given by the defendant to the plaintiffs if indeed the purpose of the power of attorney was to serve as a sale and purchase agreement between the parties.

[113] The impugned power of attorney has no life of its own. It does not confer any proprietary right to the defendant. In *Ngadi bin Apandi v Mohamad Ali bin Md Ahsan & Ors* [2016] MLJU 1548; [2016] 1 LNS 1743 His Lordship Wan Ahmad Farid Wan Salleh JC (as he then was) held:

> [18] As I said in my judgment in *Mariaton Darussalam & Anor v Abdul Rahim Omar & Ors* [2016] MLJU 1918; [2016] 5 CLJ 611 'an irrevocable power of attorney, even if for valuable consideration within the meaning of s 6 of the Powers of Attorney Act 1949, cannot be construed as a sale and purchase agreement with the necessary essence and ingredients of a valid contract'. This is more so when there is no indication at all that the POA in the instant case, at least on the face of it, is not a power of attorney for valuable consideration within the meaning of s 6.
>
> [19] A power of attorney, no matter how the words therein are couched, does not have a life of its own. It does not confer any proprietary right to the donee. In *Firstcrest Global Limited & Ors v indexia Assets Limited & Ors* [2006] 5 MLJ 723; [2006] 1 LNS 65 (CA), James Foong JCA (as he then was) in delivering the judgment if the Court of Appeal stated the law as follows:
>
> > Refusing to concede, Mr Malik Imtiaz argued that aside from the sale of shares agreement, there is also the power of attorney. This instrument gives certain powers to the appellants in respect of the disputed block of shares. But it is my view that this instrument (power of attorney) is only a subsidiary document to the sate of shares agreement. without the sale of shares agreement, which is the

principal instrument, the power of attorney cannot subsist. It does not have a life of its own. It is appendant to the sale of shares agreement. So when the principal agreement cannot give proprietary right in law then the power of attorney, a subsidiary instrument, also confers no such right.

[114] In the circumstance, I find the impugned power of attorney is only a subsidiary instrument and not a sale and purchase agreement for the lands that contains all the terms and conditions for the sale.

[115] The defendant had no right to use the impugned power of attorney which had no valuable consideration and which is not a sale and purchase agreement to transfer the lands. In *Tan Ah Kow & Anor v Tan Chaui En* [2017] 6 MLJ 297; [2018] 2 CLJ 610, the Court of Appeal held as follows:

(3) The POA did not make any specific reference to the 13 lands, which were described as 'properties' in the recital of the POA. Furthermore, there was no mention in the POA of any valuable consideration being given by the respondent to the first appellant if indeed the purpose of the POA was to serve as a SPA between the parties. Although the POA came under the ambit of the Powers of Attorney Act 1949, it was the Contracts Act 1950 which applied in view of the respondent's contention that the POA could be treated as the alleged SPA reduced in writing. Therefore, the POA could not stand as it had vague terms and discrepancy of definitions. It was void for uncertainty, as provided under s 30 of the Contracts Act 1950. The respondent had no right to use the POA, which was not an SPA, to transfer the first appellant's 1/3 share in the ten lands to himself.

[116] For the foregoing reasons, I find the impugned irrevocable power of attorney in both cases null and void.

[117] Hence the memorandum of transfers (Form 14A) executed by the defendant as transferor and transferee using the impugned irrevocable power of attorney in both cases is null and void.

[118] In light of my above finding, in my judgement the transfer of plaintiff Mustaqeem's land to defendant is defeasible under s 340(2)(b) of the NLC (revised 2020) on the ground it was registered using the power of attorney and memorandum of transfer which are void instruments.

[119] Section 340 of the NLC (Revised 2020) read:

340 Registration to confer indefeasible title or interest, except in certain circumstances

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible —

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2) —

(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

[120] Further, in support of my finding, I rely upon the decision of the Court of Appeal in *Five Star Heritage Sdn Bhd & Ors v Nai Ninn Sararaksh & Anor* [2024] 2 MLJ 315; [2023] 5 CLJ 345, wherein it was held:

Whether the doctrine of indefeasibility of title would prevent the setting aside of the registration of the land now in the name of Five Star

[87] Any transfer of land held under a public charitable trust without a proper and valid court order would be void as caught under the prohibition of a transfer under a void or insufficient instrument. The instrument of transfer in Form 14A under the National Land Code premised as it is on a court order that has been set aside would be void and the transfer that it purported to effect would have to be set aside.

[121] Before the above decision, the Federal Court in *Samuel Naik Siang Ting v Public Bank Bhd* [2015] 6 MLJ 1; [2015] 8 CLJ 944 held as follows:

[66] Under s 340(2)(b), *the title or interest of any person for the time being registered as proprietor of any alienated land shall not be indefeasible where the registration was obtained using an insufficient or void instrument.*

[67] In 'Tenure and Land Dealings in the Malay States' by David SY Wong, at p 364 the author explained the phrase 'insufficient or void instrument' for the purpose of s 340(2)(b) of the NLC as follows:

(iv) 'Insufficient or void instrument' Section 340(2) (b) also provides that a registered title is defeasible where registration was obtained 'by means of an insufficient or void instrument'. Unlike 'forgery', the expression 'insufficient or void instrument' is so wide as to defy comprehensive enumeration of the circumstances in which a purportedly executed instrument of dealing may be

regarded by the court as 'insufficient' or 'void'. Some general observations may indicate how wide its domain may be. The reference to the insufficiency and voidness of an instrument could pertain to all sorts of circumstances and matters relating to the execution of the instrument. Where the instrument is executed in pursuance of a contract of dealing, the invalidity of contract (ie where the contract is void) would plainly entail that the instrument is void accordingly. The instrument may also be 'insufficient' or 'void' for reasons relating to the capacity of the parties concerned, or by reason of some formal defect or irregularity. In addition, noncompliance with relevant statutory requirements may also result in the instrument being regarded as 'insufficient' or 'void'.

[122] Based on the foregoing, the plaintiffs have proven their claim on the balance of probabilities.

DECISION

[123] In conclusion, the plaintiffs claims in both suits are hereby allowed with cost.

[124] In the plaintiff (Mustaqeem) claim in Suit No 27, I hereby declare the impugned power of attorney and the memorandum of transfer is null and void, the registration of these instruments with the Land Office to be revoked and cancelled, the defendants' name on the title to be cancelled and the plaintiff (Musteqeem's) name to be reinstated as the proprietor of the Land.

[125] Whereas in plaintiff (Naqiuddin's) claim in Suit No 28, I hereby declare the impugned power of attorney is null and void and its registration with the Land Office to be revoked.

[126] I also grant a consequential order for the Land Administrator to give effect to my above orders under s 417 of the National Land Code (Revised 2020).

Plaintiff's claims allowed with cost.

Reported by Ahmad Ismail